THE HON'BLE MS JUSTICE G.ROHINI

–

WRIT PETITION NO : 20385 of 2004

Dated: 08-12-2005

Between:

Jadapalli Venkata Narasaiah,

RayapurMandal, Nellore District

..... PETITIONER

AND

The District Collector & Election Authority,

Nellore and another.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20385 of 2004

O R D E R:

Heard the learned counsel for the petitioner and the learned Government Pleader for Co-operation appearing for respondents.

Petitioner is the President of Rapur Toddy Taper
Co-operative Society, Rapur. It is not in dispute that since the tenure of the managing committee expired, the elections were scheduled to be conducted in October, 2004. As per the election schedule, the second respondent-Election Officer conducted the election and 24 members were elected. Subsequently, the election to the office bearers of the society was scheduled to be held on
28-10-2004. However, under the impugned notice dated
28-10-2004 issued by the second respondent-Election Officer, the members of the society were informed that the elections were postponed indefinitely as per

the proceedings of the District Collector & Magistrate, Nellore. Aggrieved by the same, this writ petition is filed.

Learned counsel for the petitioner points out that under Rule 22-C of the A.P. Co-operative Societies Rules, 1964 (for short 'the Rules'), the Government or the Election Authority may direct postponement of elections only on three grounds specified thereunder. He contends that the impugned notice does not specify the reasons for postponement and at any rate the election cannot be postponed indefinitely and therefore, the entire action is arbitrary and illegal.

The second respondent-Election Officer filed counter affidavit stating that he received a complaint dated 12-10-2004 from one J.Jaya Ramaiah and eight other members of the society alleging that outgoing management of the society indulged in certain malpractices as under:

1. *On 20-07-1998 the management admitted 30 members in the society,*
2. *On 10-04-2001 the management removed 25 members and their share capital was shown is returned in the records,*
3. *On 01-03-2003 some of the persons were admitted illegally by the management.*

It is further stated in the counter affidavit that the petitioner alleged that the management having collected Rs.6,000/- remitted the same towards rental head instead of remitting under thrift fund/enhanced share capital under Section 25 of the A.P.Co-operative Societies Act,1964 and accordingly sought enquiry and requested to postpone the elections. Accordingly, an enquiry was initiated and in view of the pendency of the said enquiry, the elections could not be conducted.

For proper appreciation of the contentions raised by the parties, it would be appropriate to extract Rule 22-C, which reads as under:

> ***22-C*** *(1) notwithstanding anything contained in these rules, the Government or the Election Authority may direct the postponement of elections under one or more of the following circumstances:-*

i. *Break down of law and order affecting the peaceful and lawful conduct of elections.*

ii. *Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.*

iii. *Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely*

b. *The postponement shall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommended when the conditions become conductive for recommencing of election, by issue of an order by the Authority that has postponed the elections. The process will re-commence from the stage at which it was obstructed or interrupted.*

On a perusal of the above Rule, it is clear that the Government and the Election Authority are competent to postpone the election, however, the same can be done only under the three circumstances specified thereunder.

It is clear from the counter affidavit that the elections were postponed only on the ground that enquiry is pending into the allegations made by one J.Jaya Ramaiah and eight others but not any of the grounds specified under Rule 22-C of the Rules. Pendency of such enquiry cannot be made a ground for postponing the elections under Rule 22-C of the Rules.

In the circumstances, I am of the opinion that the action of the respondents in postponing the elections under the impugned notice is not in accordance with law and unwarranted.

Accordingly, the writ petition is disposed of with a direction to the respondents to conduct elections to the Rapur Toddy Tapper Co-operative Society, Rapur, expeditiously following due process of law. The election process shall be commenced from where it was stopped and necessary further steps shall be taken in accordance with law. No costs.

_____

G.ROHINI,J

08-12-2005

klp